

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

ROCKIE DURAL PICKENS	§ § § § § § § § § §	PLAINTIFF
v.		Civil No. 1:19cv948-HSO-JCG
MARIA MOMAN and MIKE EZELL		DEFENDANTS

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION [19] AND DISMISSING PLAINTIFF'S CASE
WITHOUT PREJUDICE**

This matter comes before the Court on the Report and Recommendation [19] of United States Magistrate Judge John C. Gargiulo, entered in this case on May 11, 2020. The Magistrate Judge recommended that Plaintiff's suit be dismissed for failure to prosecute and for failure to abide by orders of the Court. After due consideration of the Report and Recommendation [19], Plaintiff's Complaint, the record, and relevant legal authority, the Court finds that the Magistrate Judge's Report and Recommendation should be adopted as the opinion of this Court.

I. RELEVANT BACKGROUND

On October 21, 2019, Plaintiff Rockie Dural Pickens ("Plaintiff"), acting pro se, filed his Complaint [1-2] against Defendants Maria Moman ("Moman") and Mike Ezell ("Ezell") (collectively "Defendants") in Mississippi state court, claiming that Defendants were deliberately indifferent to his medical needs and that they interfered with his right to freely exercise his religion. Compl. [1-2] at 3-7. Ezell

removed the action to this Court, Notice of Removal [1], and on January 24, 2020, he filed a Motion [10] to Dismiss. Because Plaintiff did not respond to the Motion [10], the Magistrate Judge entered an Order to Show Cause, requiring Plaintiff to show cause by March 31, 2020, why the case should not be dismissed for failure to prosecute. Order [15] to Show Cause at 2. The Order warned Plaintiff that the Court may dismiss his suit for failure to prosecute under Federal Rule of Civil Procedure 41(b). *Id.* The Order [15] was mailed to Plaintiff's address of record.

Plaintiff did not respond to the Court's Order [15] and, on April 6, 2020, the Magistrate Judge entered a Second Order [17] to Show Cause. The Order [17] again warned Plaintiff that his suit was subject to dismissal for failure to prosecute under Federal Rule of Civil Procedure 41(b) and required Plaintiff to respond by April 29, 2020. Second Order [17] to Show Cause at 2. To date, Plaintiff has not responded to either of the Court's Orders [15] [17] or Defendant Ezell's Motion [10] to Dismiss.

On May 11, 2020, the Magistrate Judge entered a Report and Recommendation [19], recommending that the Court dismiss Plaintiff's suit for failure to prosecute and for failure to abide by the Court's orders. R. & R. [19] at 3. The Report and Recommendation [19] was mailed to Plaintiff at his address of record. Plaintiff has not filed an objection to the Magistrate Judge's Report and Recommendation and the time for doing so has passed. *See* R. & R. [19] at 4.

II. DISCUSSION

Where no party has objected to a magistrate judge's proposed findings of fact and recommendation, the Court need not conduct a de novo review of it. 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge's Report and Recommendation is neither clearly erroneous nor contrary to law, and that the Report and Recommendation should be adopted as the opinion of the Court.

III. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Magistrate Judge's Report and Recommendation [19] entered in this case on May 11, 2020, is adopted as the opinion of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that this civil action is **DISMISSED WITHOUT PREJUDICE** for failure to obey Orders of the Court and for failure to prosecute. A separate judgment will be entered in accordance with this Order, as required by Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED AND ADJUDGED this the 17th day of June, 2020.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE